

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment	)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of	)	
Broadband Deployment by Improving Policies	)	
Regarding Public Rights of Way and Wireless	)	
Facilities Siting	)	

**COMMENTS OF CITY OF RENO**

The City of Reno files these comments in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding. Through these comments, the City of Reno seeks to provide the Commission with basic information regarding its local right-of-way and facility management practices and charges.<sup>1</sup> The Commission should not interfere with these local policies here. The City of Reno has developed considerable expertise applying its policies to protect and further public safety, economic development, and other community interests. By adopting rules in this area, the Commission could disrupt this process at substantial cost to local taxpayers and to the local economy. We believe that a basic respect for federalism, a fair reading of the Constitution and the Communications Act, and an honest assessment of the Commission’s limited expertise on local land use matters all point to the same conclusion: this is no place for federal regulation.

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<sup>1</sup> We use the term “charges” to include both any cost recovery that is part of right-of-way and facility management (such as permitting fees), as well as other compensation we may receive from communications companies for use of the rights-of-way and other facilities consistent with state and local law.

The City of Reno has successfully managed its property to encourage deployment of several broadband networks to date. As a result, broadband service is available to 98.92 percent of the households and businesses in our jurisdiction. There is no evidence that our policies or charges with respect to placement of facilities in the rights-of-way or on City property (such as City buildings or structures) have discouraged broadband deployment. Our community *welcomes* broadband deployment, and our policies allow us to work with any company willing to provide service. No company has cited our policies as a reason that it will not provide service. We believe our policies have helped to *avoid* problems and delays in broadband deployment by ensuring that broadband deployment goes smoothly for both the providers who follow the rules and the larger community. On the other hand, we also know that many entities seeking access to our rights-of-way and facilities would prefer to live without rules or regulations, to the great detriment of other users, abutting landowners, commuters, and the general taxpayer.

In response to the NOI, the City of Reno provides the following information:

**I. *Application Procedures, Forms, Substantive Requirements, and Charges.***

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.<sup>2</sup>

The City of Reno applies the following right-of-way management and facility placement procedures. Right-of-way construction is governed by Excavation Permit regulations (RMC 12.08) and Encroachment Permit (RMC 6.11) regulations. Contractors are required to be properly licensed to perform the work and submit a bond in the amount of \$5,000 to the City prior to permit issuance. The licensed/bonded contractor information and the permit application are available on line at City of Reno: Capital Projects.

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<sup>2</sup> NOI ¶ 14.

A license agreement with the applicant would be required prior to placement of broadband utility on City of Reno facilities or property.

***Sources of Delays.***

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications.<sup>3</sup>

In the City of Reno, most applications are processed within 24 hours. Projects which require detailed plans can typically be processed within three working days if they are submitted with a completed application and all required information shown on the plans. To the best of our knowledge, there has never been a delay which arose from a factor related to City policies or procedures.

**II. *Improvements.***

The Commission asks whether there are particular practices that can improve processing.<sup>4</sup>

The City of Reno has recognized a number of practices that have improved the process. We offer online permit information and can expedite permit handling.

**III. *Permitting Charges.***

The Commission seeks data “on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees.” Specifically, the Commission asks commenters to identify:

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<sup>3</sup> *Id.*

<sup>4</sup> NOI ¶¶ 14, 29.

- the type of facilities for which such charges are assessed;
- how such charges are structured (e.g., per foot or percent of revenue in the case of rights of way fees);
- whether the community is subject to comprehensive state franchising or rights-of way-laws;
- whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct and/or indirect), and accompanied by comprehensive terms, and conditions; and
- the value of any in-kind contributions required for access or permit approval.

The Commission further asks whether such charges are related to impacts on the local community, such as pavement restoration costs for projects that involve trenching in roadways.<sup>5</sup>

In the City of Reno, franchise fees are paid by water, gas electric, and cable TV utilities. Franchise fees are negotiated on an individual utility basis and are typically based on a percentage of revenue.

The City of Reno does not currently charge an application fee for Excavation Permits or Encroachment Permits.

Excavation permit fees are a charged to anyone who applies to perform construction within the City's right-of-way. These fees are based on the staff time required to process the application, and inspect the location before during and after the work. The fee for the base excavation permit is currently (FY 11/12) \$156. Larger projects that will require monitoring or multiple inspections over weeks or months may also be assessed additional inspection fees based on the number of working days reported by the applicant and the estimated number of hours per

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<sup>5</sup> NOI ¶ 17.

day which will be required to inspect the project. Excavation base fees are listed in the Fee Schedule which is adopted yearly by the City Council.

Asphalt fees are added to any Excavation Permit which will require restoration of the asphalt surface. The asphalt fee quantities are based on an estimated disturbed area as reported by the applicant on the permit application. The rates for the asphalt fees are based directly on a permanent patch contract price which the City of Reno bids on a yearly or semi-yearly basis. The permanent patch contract will also include a number of additional items such as lane striping, traffic signal loops, and other roadway associated items which may be charged if those items will be disturbed with the excavation.

Penalty fees are charged for any asphalt surface which is cut during the first 5 years after it is paved. The penalty is 300% of the Excavation Permit fee the first year after paving and is decreased by 60 percentage points for each year thereafter.

Encroachment permits are also required for work in the City of Reno right-of-way. Currently (FY11/12) the base fee for an encroachment permit is \$139. Additional usage fees are charged for lane closures after the first 7 days. The lane closure fees are currently (FY 11/12) \$83/week for arterial roads, \$21/week for collector roads and \$10/week for alleys. The usage fees are intended to cover the applicant use of the travel lane and the daily City of Reno staff time required to monitor the traffic control. Encroachment permit fees are not charged to those entities covered under franchise agreements. Encroachment base fees are listed in the Fee Schedule which is adopted yearly by the City Council.

License agreements are required for any above ground or underground installation in the public right-of-way or on a City building or parcel which is not covered under a franchise

agreement. License fees are based on a square footage of area required and are billed on a monthly or yearly basis, depending on the agreement.

The above charges are important because the fees generated are used to directly provide the services required to monitor the construction activities and ensure protection of the public infrastructure.

#### **IV. *Local Policy Objectives.***

The Commission asks what “policy goals and other objectives” underlie the local practices and charges in this area.<sup>6</sup>

In the City of Reno, our policies are designed to achieve the following: (1) Facilitate the responsible deployment of services; (2) Make the services broadly available; (3) Ensure public safety; (4) Avoid traffic disruption; (5) Maintain and repair roadways; (6) Prevent public disruption and damage to abutting property; (7) Minimize accelerated deterioration to roads that accompanies street cuts; (8) Satisfy aesthetic, environmental, or historic preservation concerns; (9) Avoid damage to the property of others; (10) Obtain fair compensation for use of public property

#### **V. *Possible Commission Actions.***

Finally, the Commission asks what actions the Commission might take in this area.<sup>7</sup>

As noted above, the City of Reno strongly urges the FCC to refrain from regulating local right-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and

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<sup>6</sup> NOI ¶ 22.

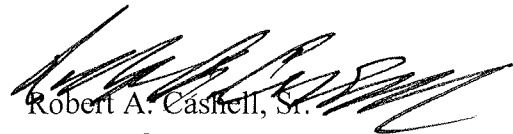
<sup>7</sup> NOI ¶ 36.

circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for our community, and it would have the potential to undermine important local policies. Likewise, Commission regulation of charges for use of the rights-of-way could have significant impacts on the community, and may actually make it infeasible to continue to maintain or provide important public services. If the Commission feels compelled to act in this area at all, it should limit itself to voluntary programs and educational activities, and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

### CONCLUSION

The City of Reno urges the Commission to conclude that right-of-way and facility management and charges are not impeding broadband deployment. As indicated above, in the City of Reno, our policies and procedures are designed to protect important local interests, and have done so for many years. There is no evidence that the policies have impaired any company from providing broadband service here, and there are many reasons to believe that federal regulations would prove costly and disruptive to our community.

Respectfully submitted,



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